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UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 15

Application Number: 09/372,646  
Filing Date: August 12, 1999  
Appellant(s): JURGOVAN ET AL.

**MAILED**

OCT 19 2001

**GROUP 1700**

Richard Wydeven  
For Appellant

**EXAMINER'S ANSWER**

This is in response to appellants' brief on appeal filed August 15, 2001.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

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The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

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**(5) *Summary of Invention***

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**(6) *Issues***

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**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-16 stand or fall together while claims 17-26 also stand or fall together, and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

<b>4,617,683</b>	<b>Christoff</b>	<b>10-1986</b>
<b>5,224,779</b>	<b>Thompson et al</b>	<b>7-1993</b>

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), walls of laminate materials (column 4, lines 4-23), a

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3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not recite specific opening forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper as instantly claimed. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers, since Christoff is silent as to opening force required, and since Thompson et al teach that this was a common range of opening force for food packages consumed by the public (column 3, line 4).

#### ***(11) Response to Argument***

Appellants argue that Christoff does not teach "a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together". However, Figure 3 of Christoff clearly shows this limitation.

Appellants argue that Christoff does not teach opening the package by gripping it below the zipper. As previously mentioned above, this is merely a preferred method of opening the claimed package. The Christoff package was capable of functioning as claimed, and thus the claims are not patentably distinguished from the prior art. Appellants also argue that this "represents a limitation defining structural features", yet

do not specify or explain what supposed "structural features" are meant to be conveyed. No such distinguishing features, patentable or otherwise, are noted.

In response to appellants' argument that the references fail to show certain features of appellants' invention, it is noted that the features upon which appellants rely (i.e., the top seal and zipper opened simultaneously by a single force) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It should also be noted that the product claims only recite an intended method of use by opening the zipper with a "pinch-grip opening force applied to said front and rear walls below said engagement members", and that the top seal is only required to be "manually pinch-grip openable" without specifying where this force is applied. It is submitted that these have been met by the structure of Christoff.

Appellant argues that Christoff does not teach "delamination" as a means to open the package. However, Christoff clearly teaches opening the package by delamination when it is stated that "Opening of the bag may be effected... by pulling the seal 42 at the top of the bag open" (column 6, line 35). Delamination is simply the act of separating layers, which in this case, was met by the opening of the sealed package.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Drew Becker  
October 18, 2001

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*Appeal Conference*



## Mail Report - Today's Mail

PTO W#	DATE 1/18/02	DATE 10/19/01	MAIL TYPE PTO MAIL-	RW Courier Name:	EXAMINER'S ANSWER	DATE 1/18/02	COURIER COALV
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**IN THE  
UNITED STATES  
PATENT AND TRADEMARK  
OFFICE**

<i>Application No.</i>	09/372,646
<i>Filing Date</i>	August 12, 1999
<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
<i>Group Art Unit</i>	1761
<i>Examiner Name</i>	D. Becker
<i>Attorney Docket No.</i>	914-1372DIV1

*Title of the Invention:*  
**FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER**

**DECLARATION OF CECELIA BELL-GIBSON**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Cecelia Bell-Gibson, declare as follows:

I am of legal age and have the mental capacity to make this declaration;

I am the Docket Coordinator for the firm of Rothwell, Figg, Ernst & Manbeck, P.C., and have held this position for approximately one year;

As Docket Coordinator, it is part of my responsibilities to ensure that incoming mail is processed according to office procedure;

The procedure of this office for processing incoming mail includes date-stamping all U.S. Patent and Trademark Office mail with the current date on the date that it is received in our office; further, all such mail is logged into a computer database listing, among other things, the date of receipt of such mail in our office.

I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Cecelia Bell-Gibson				
SIGNATURE			DATE	January 29, 2002	
Address	Rothwell, Figg, Ernst & Manbeck Suite 701-East, 555 13th Street, N.W.				
City	Washington	State	D.C.	Zip Code	20004
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031

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UNITED STATES DEPARTMENT OF COMMERCE  
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*11/20/01*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/372,646	08/12/99	JURGOVAN	M 914-1372DIV1

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TM52/1019

EXAMINER

BECKER, D

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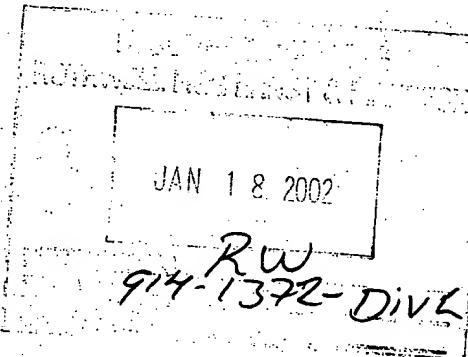
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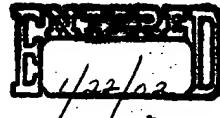
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Art Unit: 1761

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